



## Case M1465G

# Proposed acquisition of ABN AMRO (Channel Islands) Limited by Butterfield Bank (Guernsey) Limited

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## Decision – Preliminary Review

Document No: CICRA 19/27

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## 1. SUMMARY

- 1.1 Butterfield Bank (Guernsey) Limited (**Butterfield**) proposes to acquire the entire share capital of ABN AMRO (Channel Islands) Limited (**ABN AMRO CI**) from ABN AMRO Bank N.V.
- 1.2 The transaction has been notified to the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
- 1.3 The GCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

## 2. THE NOTIFIED TRANSACTION

- 2.1 On 20 May 2019, the GCRA received a joint application from Butterfield (the **Purchaser**) and ABN AMRO CI (the **Target**) for the proposed acquisition by the Purchaser of the entire issued share capital of the Target.
- 2.2 As the Purchaser is a qualifying 'financial institution or credit institution'<sup>1</sup>, the application for approval was made by way of preliminary review in Guernsey in accordance with Regulation 4(1) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012.
- 2.3 The GCRA registered the application on its website with a deadline for comments of 28 May 2019. No submissions were received.

## 3. THE PARTIES

- 3.1 Butterfield is registered in Guernsey, registered number 21061. It is a wholly owned subsidiary of The Bank of N.T. Butterfield & Son Limited which is listed on the New York Stock Exchange and the Bermuda Stock Exchange.
- 3.2 ABN AMRO CI is also registered in Guernsey, registered number 13263. ABN AMRO CI is a direct subsidiary of ABN AMRO Bank N.V.

## 4. GUERNSEY: REQUIREMENT FOR GCRA APPROVAL

- 4.1 Pursuant to s.61(1)(b)(i) of the 2012 Ordinance, a merger or acquisition<sup>2</sup> occurs for the purposes of that Ordinance when: *“an undertaking [...] directly or indirectly acquires or establishes control of another undertaking”*.

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<sup>1</sup> 'Credit institution' means a deposit taking business as defined in Section 3 of the Banking Supervision (Bailiwick of Guernsey) Law 1994; 'Financial institution' means a controlled investment business as defined in the Protection of Investors (Bailiwick of Guernsey) Law 1987 and a financial services business as defined in the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law 2008

<sup>2</sup> For brevity, mergers and acquisitions are referred to as 'mergers' in this document.

- 4.2 An acquisition by one undertaking of the entire issued share capital of another undertaking amounts to an acquisition of control for the purposes of the 2012 Ordinance. The notified transaction is therefore a merger, as defined by the 2012 Ordinance.
- 4.3 Under Regulation 2(a) and (b) of the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations 2012 (the **Regulations**), an undertaking is involved in a merger or acquisition if it is acquiring, or being acquired by, another undertaking.
- 4.4 On completion of the notified transaction, the Purchaser will acquire 100% of the shares in the Target. Both the Purchaser and the Target are therefore involved in a merger for the purposes of the Regulations.
- 4.5 Under Section 13(1) of the 2012 Ordinance, certain mergers must be notified to, and approved by, the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:
- (a) The combined Channel Islands turnover of the undertakings involved in the merger exceeds £5 million, and
  - (b) Two or more of the undertakings involved in the merger have Guernsey turnover exceeding £2 million.
- 4.6 According to information provided by the notifying parties, the combined and individual applicable turnover of the parties in the Channel Islands and Guernsey exceeds these thresholds. On this basis, the GCRA's approval is required before the acquisition is executed.

## 5. MARKET DEFINITION

- 5.1 Under Section 13 of the 2012 Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services. To this end, CICRA will identify the markets which are likely to be affected by the merger, and then assess whether competition in these markets will be substantially lessened<sup>3</sup>.
- 5.2 Both parties provide wealth management, private and fiduciary banking and custody services in Guernsey. However, as discussed below, when considering the competitive effect of the proposed acquisition, reaching a definitive conclusion on the scope of the relevant product market is not necessary because the GCRA concludes that there is unlikely to be a substantial lessening of competition in any potential relevant product market.

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<sup>3</sup> In many cases, a market may already have been investigated and defined by CICRA or another competition authority. CICRA may take note of market definitions applied by other competition authorities, although these are not precedents. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

5.3 For similar reasons, a definitive position concerning the precise scope of the relevant geographic market is not necessary because no matter how the market is defined, the proposed acquisition is unlikely to result in a substantial lessening of competition in Guernsey or any part thereof.

5.4 The Guernsey Financial Services Commission (**GFSC**) supervises and regulates the banking, fiduciary, insurance and investment sectors in Guernsey. According to information provided by the parties and available from the GFSC, there are 23 holders of banking licences in Guernsey, of which the parties each hold 1 licence. Of these holders of banking licences, 18 have the necessary licence to provide custody services, of which the parties each hold 1 licence.

5.5 On this basis, it can be presumed that the market share held by the merged parties post-transaction will not lead to a substantial lessening of competition<sup>4</sup>.

## 6. DECISION

6.1 Based on the preceding analysis, the GCRA concludes that the acquisition will not substantially lessen competition within any market in Guernsey for goods or services.

6.2 The GCRA is also satisfied that the merger would not be to the prejudice of:

- (a) Consumers or any class or description thereof;
- (b) The economic development and well-being of the Bailiwick; or
- (c) The public interest

6.3 The merger is therefore approved under Section 13 of the 2012 Ordinance.

**31 May 2019**

**By Order of the Board of the GCRA**

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<sup>4</sup> EC Guidelines on the assessment of horizontal mergers under Council Regulation 139/2004, para. 18, states that an indication that where the undertakings concerned have a market share not exceeding 25%, it can be presumed not to impede effective competition.